IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.12/1999

Smt. Muktabai Venkatdas
Sanguenkar, aged 50 years,
housewife, resident of
House No.97, Near Cine,
Blue Pearl, Margao, Goa. ..... Appellant.

V/s.

1. Shri Francis Rodrigues,
son of Joao Rodrigues,
resident of Church Ward,
Mandur, Ilhas, Goa.

2. Shri Jose Lopes,
son of Santana Lopes, resident
of House No.741/1, Agacaim,
Ilhas, Goa.

3. The Oriental Insurance Co. Ltd.,
Margao, Goa. .... Respondents.

Mr. M.S. Sonak, Advocate for the appellant.

Mr. E. Afonso, Advocate for respondent No.1.

CORAM : F.I. REBELLO, J.

DATE : JULY 3, 2003.

ORAL JUDGMENT :

The claim petition filed by the appellant herein was dismissed by the Claims Tribunal on the ground that the appellant herein had not been able to prove that the vehicle was being driven in a rash and negligent manner. Several issues were framed, of which issue No.1 was whether the claimant proves that on 8.12.1995, the accident took place due to rash and negligent driving of bus bearing no. GA-01/T-6969 by respondent No.2. Issue

No.6 was whether the respondents prove that one bull came across the road all of a sudden and in the process of saving that bull, dashed against the pillion rider on the scooter who subsequently expired and it was on account of the fault of the scooterist in not keeping the safe distance from the bus that the accident took place and, as such, the respondents are not liable to pay any compensation. The learned Claims Tribunal held that the same was not proved.

2. In the claims statement, in para 10 the averments are that the deceased was travelling as a pillion rider on scooter bearing no. GDW 2820 and the bus bearing no. GA-01/T6969 came and dashed against the scooter, which was going from Nuvem to Margao. In the written statement filed by respondents No.1 and 2, in para 2 they have admitted the contents of para 10. In other words, there was an admission that the accident took place on account of the bus hitting the scooter. Once that be case, the learned Tribunal had not to address itself as to issue No.6. Issue No.6 really would not have arisen. Apart from that, no evidence was led to the contra. The appellant examined AW.4, who, apart from being panch witness, had also deposed that he was an eye witness to the accident wherein the bus hit the scooter and the scooterist died, that by itself ought to have been resulted in the finding that the

death was on account of negligence of the bus. Once that be the case, and in the absence to prove any negligence on the part of the scooterist, it had to follow that the accident was on account of the rashness of the bus. It is nobodies case that the scooterist came on wrong side of the road. In these circumstances, the finding to that extent is liable to be set aside. The appeal is partly allowed.

The learned Tribunal has quantified the amount in so far as issued No.5 is concerned.

3. In the light of that, appeal is allowed. The amount as awarded by the Claims Tribunal while answering issue No.5 is awarded. At the relevant time, the bus was insured. In the light of that, the liability of the respondents would be joint and several. Considering that, the claim is allowed in the sum of Rs.1,02,700/- along with the interest at the rate of 8 % per annum, from the date of claim petition i.e. 28.2.1996 till payment along with the costs, quantified at Rs.2500/-. Insurance Company to deposit the claim amount within twelve weeks from today. Appeal stands disposed of accordingly.

F.I. REBELLO, J.

ssm.